

MANDATE

S.D.N.Y.-N.Y.C.  
08-cv-3259  
Wood, C.J.

United States Court of Appeals  
FOR THE  
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11<sup>th</sup> day of June, two thousand eight,

Present:

Hon. Guido Calabresi,  
Hon. Rosemary S. Pooler,  
*Circuit Judges.*

George Espinal,

*Petitioner,*

v.

United States of America,

*Respondent.*

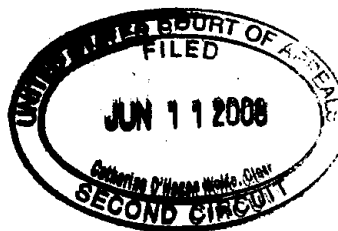
George Espinal,

*Petitioner-Appellant,*

v.

United States of America,

*Respondent-Appellee.*



08-1667-op

08-2081-pr

A TRUE COPY

Thomas Asreen, Acting Clerk

by Christine Phillips  
Deputy Clerk

ISSUED AS MANDATE:

JUL 23 2008

The two above-captioned matters are consolidated for the purposes of this order.

Petitioner, *pro se*, requests an order authorizing the United States District Court for the Southern District of New York to consider a second or successive 28 U.S.C. § 2255 motion. Upon due consideration, it is hereby ORDERED that the application is DENIED because Petitioner has not satisfied the criteria set forth in 28 U.S.C. § 2255(h) and, even if considered pursuant to pre-Anti-Terrorism and Effective Death Penalty Act law, the proposed petition does not present grounds that would permit the district court to grant relief, *see McCleskey v. Zant*, 499 U.S. 467, 493-94 (1991).

Additionally, Petitioner has also filed a notice of appeal of the district court's transfer order, which resulted in the proceeding docketed under 08-2081-pr. Under this docket number, Petitioner moves for *in forma pauperis* status. Upon due consideration, it is hereby ORDERED that the appeal docketed under 08-2081-pr is DISMISSED for lack of appellate jurisdiction. *See Murphy v. Reid*, 332 F.3d 82, 83-85 (2d Cir. 2003) (holding that transfer orders are not immediately appealable under 28 U.S.C. § 1291 or the collateral order doctrine). The motion for *in forma pauperis* status is denied as moot. Under docket number 08-1667-op we find, however, that the district court properly transferred the matter to this Court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

By: 